



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9731-4]

State Program Requirements; Application to Administer Partial National Pollutant Discharge Elimination Program; Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Oklahoma Department of Agriculture, Food and Forestry (ODAFF) has submitted to the Environmental Protection Agency (EPA) an application for authorization of the Agriculture Pollutant Discharge Elimination System (AgPDES) program pursuant to Section 402(b) of the Clean Water Act (CWA or “the Act”). ODAFF seeks approval to administer a major category partial National Pollutant Discharge Elimination System (NPDES) permit program under Section 402(n)(3) of the Act for all discharges of pollutants into waters of the United States within its jurisdiction. Today, EPA is providing public notice of ODAFF’s request for AgPDES program approval and of both a public hearing and public comment period on the State’s program approval submission. EPA will either approve or disapprove authorization of the AgPDES program after considering all comments received.

TO VIEW OR OBTAIN COPIES OF DOCUMENTS: Copies of ODAFF’s program approval submission (referred to throughout this document as ODAFF’s application) and all other documents in the official record are available for inspection from 9:00 am to 4:00 pm, Monday through Friday, excluding legal holidays, at EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202.

A copy of ODAFF’s application is available online at the EPA Region 6 web page <http://www.epa.gov/region6/water/npdes/ok-daff/index.html>. A paper copy of part of all of the State’s application may be obtained from EPA Region 6 in Dallas for a cost of \$0.15 per page.

DATES: The public comment period on the State's application will run from the date of publication until **[insert date 45 days after publication date]**. Comments may be submitted in paper or electronically and must be received or post-marked no later than midnight on **[insert date 45 days after publication date]**. Both an informal public meeting and a public hearing will be held in Oklahoma City, Oklahoma on October 25, 2012. The public meeting will include a presentation on the AgPDES program approval request and a question and answer session. Written, but not oral, comments for the official record will be accepted at the public meeting. The public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official record. The public meeting will begin at 6:00 pm. The public hearing will begin at 7:00 pm. Both the public meeting and the public hearing will be held at the Metro Technology Centers, Springlake Campus/Business Conference Center, Auditorium, 1900 Springlake Drive, Oklahoma City, Oklahoma 73111.

ADDRESSES: Comments should be sent to: Ms. Diane Smith (6WQ-NP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted via e-mail to the following address: smith.diane@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Hamilton at the EPA address listed above or by calling (214) 665-2775, FAX (214) 665-2191, e-mail: Hamilton.Denise@epa.gov.

SUPPLEMENTAL INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. Major category partial permit program approval is provided for under section 402(n)(3) of the CWA. Pursuant

to that Section, EPA may approve a partial permit program covering a major category of a State's discharges if the program represents a complete permit program and covers all of the discharges under the jurisdiction of the agency seeking approval, and if EPA determines that the partial program represents a significant and identifiable part of the State program required by Section 402(b) of the Act. However, ODAFF does not have jurisdiction over all discharges within the State of Oklahoma. A large portion of the State's discharges are within the jurisdiction of the Oklahoma Department of Environmental Quality (ODEQ) and other discharges are within the jurisdiction of the Oklahoma Corporation Commission.

The regulatory requirements for state program approval are set forth in 40 CFR Part 123. 40 CFR 123.21 lists the basic elements of an approvable application. EPA Region 6 considers the documents submitted by the State of Oklahoma administratively complete at the time of this document. EPA will make a final decision regarding AgPDES program approval after completion of a public hearing and public comment period on the State's application and after consideration of all public comments provided during the public comment period or at the public hearing.

On August 16, 2012, the Governor of Oklahoma requested NPDES major category partial permit program approval and submitted, in accordance with 40 CFR Section 123.21 program description (including funding, personnel requirements and organization, and permit and enforcement procedures), a Statement of Legal Authority, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 6 and the Commissioner of Agriculture for ODAFF. ODAFF seeks permitting and enforcement authority for all discharges within its jurisdiction. At the request of EPA, ODAFF made revisions to several of the program submittal documents and the last of these

revisions was received by EPA on September 7, 2012. EPA has determined that ODAFF's August 16th application for partial program approval, as amended September 7, 2012, constitutes a complete State program submission under 40 CFR 123.21. A letter of completeness was sent to ODAFF on September 13, 2012. EPA is required to approve ODAFF's application within 90 days of submittal of a complete submission unless the submittal does not meet the requirements of Section 402(b) of the Act and EPA regulations, or EPA and ODAFF jointly agree to extend this deadline. (See 40 CFR 123.21 (d)). To obtain such approval, ODAFF must show among other things that it has authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period, the Regional Administrator for EPA Region 6 will make a decision to approve or disapprove the AgPDES program for implementation by the State. EPA's final decision to approve or disapprove the AgPDES program will be based on the requirements of Section 402 of the CWA and 40 CFR Part 123.

If EPA approves the AgPDES program, the Regional Administrator will so notify the State and will sign the proposed MOA. Notice will be published In the Federal Register and, as of the date of program approval, EPA will transfer to ODAFF NPDES permitting authority and primary enforcement responsibility for those discharges subject to the AgPDES program. If EPA's Regional Administrator disapproves the AgPDES program, ODAFF will be notified of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the public hearing:

1. The Presiding Officer will conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearing.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may in his discretion exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of ODAFF's application.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record will be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing.

6. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to summarize their points rather than reading lengthy written comments verbatim into the record. All comments received by EPA Region 6 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on ODAFF's request for AgPDES program approval.

Scope, Transfer of NPDES Authority, and Summary of the AgPDES Program Documents

A. Scope of the Partial Program

The proposed AgPDES program is a major category partial permit program in conformance with the requirements of Section 402(n)(3) of the CWA. The proposed program is a complete permit

program for all discharges under ODAFF's jurisdiction and represents a significant and identifiable part of the state program required by § 402(b) of the CWA. The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by ODAFF are point source discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges from silviculture activities, and discharges of storm water from agricultural activities.

ODAFF has jurisdiction over all matters affecting agriculture that have not been expressly delegated to another state or federal agency, as set out in the Oklahoma Agriculture Code, and is responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility. The Oklahoma Environmental Quality Act gives ODAFF environmental jurisdiction over point source discharges from agricultural crop production and agricultural services. It also gives the Agency environmental jurisdiction specific to the application of pesticides. ODAFF does not have jurisdiction over storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14)) at facilities whose primary industrial activity is storage of grain, feed seed, fertilizer, and agriculture chemicals (e.g., SIC code 4121) and are thus required by federal regulations to have a storm water permit. However, ODAFF's jurisdiction includes all discharges at facilities regulated by ODAFF that only incidentally store grain, feed, seed, fertilizer, and agriculture chemicals to support the primary activity of the facility (e.g., feed storage at a CAFO). ODAFF has the necessary jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to the Oklahoma Department of Environmental Quality (ODEQ). ODAFF also has jurisdiction to regulate discharges resulting from silvicultural discharges related to tree growing,

planting management, log transport and log storage, and other activities, except those related to wood preservation and processing regulated pursuant to 40 C.F.R. Part 429 (Timber Products Processing) and Part 436 (Mineral Mining and Processing), which are regulated by ODEQ.

Activities that are not within ODAFF's environmental jurisdiction include commercial manufacturers of fertilizers, grain and feed products, and chemicals; manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products; slaughterhouses, except for feedlots at those facilities; and aquaculture and fish hatcheries. These exceptions to the Agency's jurisdiction include, but are not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities.

ODAFF is not seeking authority to regulate discharges to Indian Country, as defined in 18 U.S.C. § 1151. EPA retains NPDES permitting authority and primary enforcement responsibility over Indian Country in the State of Oklahoma.

B. Transfer of NPDES Authority and Pending Actions

Upon approval of the AgPDES program, authority for all NPDES permitting activities, as well as primary responsibility for NPDES enforcement activities, within the scope of ODAFF's jurisdiction, would be transferred to the State. EPA would retain on a permanent basis its authority under section 402(d) of the CWA to object to AgPDES permits proposed by ODAFF, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA would also retain on a permanent basis its authority under sections 402 (I) and 309 of the CWA to file federal enforcement actions in those instances in which EPA determines the State has not taken timely or appropriate enforcement action.

Upon program authorization, ODAFF will take over administration and enforcement of EPA-issued general permits for those discharges under its jurisdiction while EPA will retain administration of the general permits for those discharges remaining under EPA jurisdiction. Dischargers remaining under EPA jurisdiction include those discharges to waters in Indian Country and those discharges under the jurisdiction of the Oklahoma Corporation Commission. The transfer of EPA-issued permits is described in Section IV.B of the MOA. A Table outlining jurisdiction over general permits after program authorization has been prepared and is available on EPA's website. This notice also serves as notice that the permits will be modified by EPA and ODAFF as necessary to reflect the transfer of jurisdiction pursuant to 40 CFR 123.1(d)(1) and 123.24(b)(1)(i).

I hereby provide public notice of the application by the State of Oklahoma for approval to administer the AgPDES program for discharges into navigable waters within its jurisdiction in accordance with Section 402(b) of the CWA and 40 CFR Part 123.

Dated: September 13, 2012.

Samuel Coleman, P.E.,

Acting Regional Administrator, EPA Region 6.